

IN RE: PETITION SPECIAL EXCEPTION
N/S Dunkirk Road, 296' E of
the centerline of York Road
(304 Dunkirk Road) - 9th
Election District
Lutie G. Ports
Petitioner
BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 84-339-X

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special exception for a professional office in his residence, as is more fully described on Petitioner's Exhibit 1.

The Petitioner appeared and testified. Appearing on his behalf was Paul Lee, a registered engineer. Although not represented by counsel at the hearing, the Petitioner did have counsel prepare a memorandum in support of his request for special exception. Ray Fidler and Thomas Church appeared and testified as Protestants, as did Benton Grothaus, Alice Lange, Kenneth Bitter, William Hops and Carol Kennedy.

Testimony indicated that the Petitioner resides on the property in question, having recently moved from Woodlawn where he was a parish minister. The house has two stories, with the Petitioner living on the first floor and the second floor rented. The Petitioner proposes to have an office in his house, which is located in a D.R. 5.5 zone, to further his profession as a pastoral counselor.

Mr. Ports is a certified minister with the United Church of Christ, and has been since 1955 when he was first ordained. The Church. His first church was in Pennsylvania where he served four years, and had been the parish minister for the past 25 years at the Bethany United Church of Christ in Woodlawn. For the past 15 years, Mr. Ports has furthered his ministry by offering his skills in combination as a pastoral counselor, an area of expertise gained through his

education (A.B. from Western Maryland College; M. Div. Theology from Lancaster Theological Seminary; M.S. in Pastoral Counseling from Loyola College; studies at Morgan State), his experience as a parish minister and as a counselor (at Spring Grove Center, Loyola and individual supervision). The Petitioner has determined that he now wants to devote his time to the pursuit of pastoral counselling and operate from his home. He has, therefore, resigned his parish, but not retired from the ministry. He has decided that his calling lies with counselling rather than with the parish, and wishes now to provide individual counselling.

He proposes to utilize his home in order to reduce his financial overhead as well as to provide a more convenient and wholesome atmosphere to his clients. Each counselling session will be 50 minutes, with his practice limited to seeing clients 20 hours per week by appointment only. No client would be counselled after 9:30 p.m. There would be no walk-in business; there would be only one telephone, no secretary, no bookkeeper, and no co-therapist. The Petitioner would use his living room as his consultation room. There will be no sign and no modification of the premises inside or out.

The Petitioner is not licensed by the State as a counselor, and of course, the State does not license ministers, but it is uncontested that he is a "licensed" minister, certified by his Church. The Petitioner argues that he is a "professional" within the meaning of the Baltimore County Zoning Regulations (BCZR).

Mr. Lee testified that the office would not occupy more than 25% of the total floor area of the residence (16%). He further testified that there would be sufficient parking, as required, off-street, access to which is provided by a driveway off Dunkirk Road (to which the house fronts) which leads to a 2-car garage and parking pad which allows for 3 cars to be parked vertically. The

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tenant on the second floor has one car and the Petitioner has two. However, the Petitioner testified that he expects no more than one car per client hour. Mr. Lee stated that in his opinion, based on his experience, there will be compliance with Section 502.1 of the BCZR in its entirety.

The Protestants are concerned about the limited parking available on the street being usurped even further by the clients seeing Mr. Ports and about the cars backing out of the Petitioner's driveway threatening children in the neighborhood with injury. Mr. Church believes that to allow the special exception would be to establish a precedent. This neighborhood has within the past few years witnessed a transition from multi-dwellings to single-family residences, and Mr. Church is of the opinion that the special exception would hamper the continued vitality of the neighborhood.

He also points out that the commercial area on York Road nearby significantly contributes to the traffic congestion because of the parking of cars by customers using the business district and the parking of cars by the shop owners themselves who park on Dunkirk Road. He argues that the special exception granted here would only aggravate the problem and further deny parking to the residents.

There was also concern raised about the diminution of property values resulting if the special exception were granted and that the Petitioner in fact does not reside in the residence. Also, concern about the quality of the clients seen by the Petitioner was raised.

The Petitioner seeks relief from Section 1B01.1.C.9B, pursuant to Section 502.1 of the BCZR.

Where the language of the regulation sustains a construction that the use of a residence is permitted for professional purposes other than those specifically mentioned therein, the question arises as to what is a profession. As indicated

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above, if the activity proposed by the Petitioner is a profession, the proposed activity would satisfy the criteria set forth in Section 502.1, BCZR.

A nurse, whether trained, practical or registered (Mayor and City Council v. Smith, 168 Md 458); a rabbi (and thus entitled to use his house for religious ceremonies) (Sessleau v. Bates, 86 A.2d 833 (NJ)); see also Ritter v. Jersey City Missionary Society, 65 A.2d 633 (NJ)); a chemist (U.S. v. Lanes, 163 U.S. 258 (1896)); a Christian Science practitioner (Audubon Area Zoning Association v. Krushevski, 82 SO.2d 460 (La)); an industrial designer, Geiffert v. Mealey, 59 NE.2d 414 (NY); all have been determined to be professionals. Teaching dancing has also been held to be a professional activity (DelPriore v. Ball, 118 NYS 2d 53; Stewart v. Humphries, 132 NE.2d 758 (Ohio)); teaching of singing or music is a profession (People v. Kelly, 255 NY 396).

The term professional has been held to relate to those who have "occupations or callings which required learned and special preparation in the acquisition of securing knowledge and skill, necessary to a proper understanding of and successful management of such occupations" such as medicine, law, or divinity as distinguished from a merchant, blacksmith, carpenter or tailor. Grendal v. White, 41 A.2d 887 (NY, 1973). The word "profession" denotes "professed attainments in special knowledge as distinguished from mere skills". Dlugos v. Zoning Board of Appeals, 416 A.2d 180 (Conn. 1980). A real estate broker is not a professional occupation. Dlugos, supra; People v. Cully Realty, Inc., 442 NYS 2d 847 (1981).

In Colker v. D.C. Board of Zoning Adjustment, 474 A.2d 820 (D.C., 1983), the court, faced with similar language found in the BCZR ("other professional persons" vs. "similar professional person"), defined the term to require: (1) professional education, (2) a code of ethics and some principles of practice through a professional organization, and (3) a professional license. See Keefe

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Co. v. D.C. Board of Zoning Adjustment, 409 A.2d 624 (D.C., 1979). Colker was a licensed CPA and was chartered by the Institute of Chartered Financial Analysts as a financial analyst. He wanted to establish his office as an accountant, analyst and economist. The Court held that in two of the three categories Colker did not meet the criteria.

In the Matter of Bernard Haygood, Jr., Case No. 81-117-SPH, the Deputy Zoning Commissioner found that a reflexologist was not an "other" professional person. The reasons expressed therein for denial included the Petitioner's lack of licensure or recognition by the State or professional organizations within the field of healing arts. (emphasis added). In the Matter of Edward T. O'Toole, Case No. 78-65-SPH, the Deputy Zoning Commissioner denied to the Petitioner the right to operate a microbiology lab as a profession. The conclusion was reached, at least in part, to deny the Petitioner relief due to the lack of approval. In the Matter of James Donahue, Case No. 82-179-V, cited by the Protestants, the Board of Appeal did find that a private investigator, licensed by the State, was a professional within the meaning of the regulations.

Black's Law Dictionary defines a profession as a "vocation or occupation requiring special, usually advanced, education and skill" and states that the labor and skill involved in a profession are "predominantly mental or intellectual, rather than physical or manual."

The term has been defined as the "occupation, if not purely commercial; technical, architectural, or the like, to which one devotes oneself; the calling in which one professes to have acquired some special knowledge used by way of instructing, guiding, or advising others, or of serving them in some art or profession of arms, teaching or chemistry." England v. La. State Board of Medical Examiners, 126 SO.2d 51. A profession is "... a calling in which one professes to have acquired some special knowledge used by way of either of

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instructing or advising others or serving them in some. The three learned professions are theology, law and medicine." State Bar of Arizona v. Arizona Land Title and Trust Co., 366 P.2d 1. Implicit is knowledge gained by advanced learning, gained by prolonged specialized instruction and study. Paterson v. S.U.N.Y., 252 NYS 2d 452.

The American Heritage Dictionary of the English Language defines "profession" as "1. An occupation or vocation requiring training in the liberal arts or the sciences and advanced study in a specialized field. 2. The body of qualified persons of one specific occupation or field..."

The Petitioner herein qualifies as a professional.

The Protestants point out, and correctly so, that the regulation makes a distinction between those who conform to the standards of a professional organization (doctors, lawyers, et al) and artisans (artists and musicians). The rule of ejusdem generis is applicable. The general words of a statute when they follow the designation of particular classes of persons should be strictly construed to include only those persons of the same class as those specifically mentioned. Smith v. Higinbotham, 46 A.2d 754; 82 C.J.S. Statutes Section 332b, 658. The regulation includes two distinct groups and it is true that the Petitioner does not fit within the concept of an artisan. It is also true that the Petitioner is not licensed by the State, either as a minister or, if taken independently, as a pastoral counselor. He does, though, meet the criteria of the first class, that is, the Petitioner is subject to the standards of a professional organization. It cannot be contested that responsible clergy, notwithstanding the lack of licensure by the government, are professionals as long as they are certified, licensed, or approved by a legitimate and legally constituted religious entity. They are held to standards and ethics as strict, if not stricter, than any doctor or lawyer; they receive a concentrated, special and advanced education; they are engaged in a predominantly mental or intellectual pursuit. The lack of licensure

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by the State would not deny to the clergy the application of the term "professional". They are in fact "licensed" and subject to the strictures of their faith and church. The concept of the First Amendment, separation of church and state, marks the distinction between State regulation of church affairs and regulation of doctors, lawyers, et. al., affairs. Ministers are not only in the popular sense, but also in the technical sense, professional. Flanders v. Daily, 48 SE.327.

The Petitioner's proposed use of his home for pastoral counselling must be permitted, within the parameters of Section 502.1, as an extension of but inclusive within the connotation of clergy as professional.

The criteria delineated in Colker, supra, are herein adopted as that which shall apply to determine whether an individual is a professional. A pastoral counselor licensed as a clergy, with a professional education and subject to a code of ethics and some principles of practice through a professional organization, is a professional within the meaning of Section 1B01.1.C.9B., BCZR. The Petitioner satisfies these criteria. See Petitioner's Exhibits A through N, attached to Memorandum In Support Of Special Exception.

It is clear that the BCZR permit the use requested by the Petitioner in a D.R. 5.5. Zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity of the proposed use. Therefore, it must be determined whether the conditions as delineated by Section 502.1 are satisfied by the Petitioner.

After reviewing all of the testimony and evidence presented, it appears that the special exception as applied for by the Petitioner should be granted, subject to certain restrictions as more fully described below. The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth

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in Section 502.1. In fact, the Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest. The facts and circumstances of the use proposed by the Petitioner do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).


The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way inconsistent with the spirit and intent of the BCZR.

Pursuant to the advertisement, posting of property, and public hearing held, and it appearing that by reason of the requirements of Section 502.1 having been met and the health, safety, and general welfare of the community not being adversely affected, the special exception should be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 10th day of July, 1984, that the Petition for Special Exception for an office of a professional (pastoral counselling) in the home, in accordance with the site plan introduced and accepted into evidence as Petitioner's Exhibit 1, be and is hereby GRANTED, from and after the date of this Order, subject, however, to the following restrictions:

1. The Petitioner shall see clients no more than 20 hours per week, and no client after 9:30 p.m. any night.
2. The special exception shall terminate upon the sale or transfer of the subject property from the Petitioner to any other party.
3. The Petitioner shall insure that his clients park in the area on site delineated for such use.

4. The Petitioner shall not have any sign indicating that he is a pastoral counselor or advertising his profession on or off the site.


ZONING COMMISSIONER
BALTIMORE COUNTY

PETITION FOR SPECIAL EXCEPTION 84-339-X

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for office of a professional (pastoral counseling) in home and to determine whether a person who does pastoral counseling at the home should be considered as a professional person or whether it should be considered a home occupation.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:
(Type or Print Name)
Signature
City and State
Attorney for Petitioner:
(Type or Print Name)
Signature
City and State
Attorney's Telephone No.:

Legal Owner(s):
LUTIE G. PORTS
(Type or Print Name)
Signature
(Type or Print Name)
Signature
Address
City and State
Name, address and phone number of legal owner, contract purchaser or representative to be contacted
504 Dunkirk Rd, Baltimore, MD, 21212
Name
377-2564
Address
Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 17th day of May, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 4th day of June, 1984, at 10:15 o'clock A.M.

Call John
Zoning Commissioner of Baltimore County.

E.C.O.-No. 1 (over)

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER
N/S Dunkirk Rd. 296' E of the
Centerline of York Rd.,
9th District
OF BALTIMORE COUNTY
LUTIE G. PORTS, Petitioner
Case No. 84-339-X

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
434-2188

I HEREBY CERTIFY that on this 11th day of May, 1984, a copy of the foregoing Entry of Appearance was mailed to Lutie G. Ports, 504 Dunkirk Road, Baltimore, MD 21212, Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman

Mr. Lutie G. Ports
504 Dunkirk Road
Baltimore, Maryland 21212

NOTICE OF HEARING

Re: Petition for Special Exception
N/S Dunkirk Rd., 296' E of the c/l of
York Road (504 Dunkirk Road)
Lutie G. Ports - Petitioner
Case No. 84-339-X

TIME: 10:15 A.M.

DATE: Monday, June 4, 1984

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE-REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 127944

DATE 4-6-84 ACCOUNT R-01-615-020

AMOUNT 100.00

RECEIVED FROM Lutie G. Ports

FOR 504 Dunkirk Rd 296' E of York Rd

100.00

001*****1006010 4064A

VALIDATION OR SIGNATURE OF CASHIER

Paul Le P.R.

Paul Le Engineering Inc.
504 W. Pennsylvania Ave.
Towson, Maryland 21204
284-5311

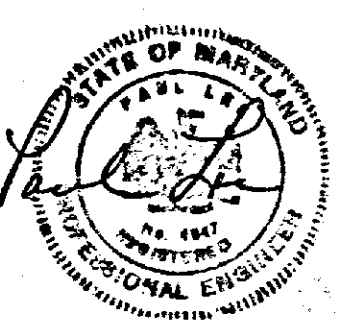
DESCRIPTION

504 DUNKIRK ROAD, NINTH ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND

This Description is for a Special Exception.

Beginning for the same at a point, said point being located on the north side of Dunkirk Road, 296 feet ± easterly from the centerline of York Road, thence binding on the north side of Dunkirk Road (1) S 71° 59' East 50 feet, thence leaving the north side of Dunkirk Road (2) N 18° 01' East 125 feet, (3) N 71° 59' West 50 feet, and (4) S 18° 01' West 125 feet to the point of beginning.

Property known as 504 Dunkirk Road and containing 0.14 acres of land more or less.



Engineers - Surveyors - Site Planners

4/3/84

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District 9 Date of Posting 5/22/84
Posted for: Petition for Special Exception
Petitioner: Lutie G. Ports
Location of property: N/S Dunkirk Rd., 296' E of the c/l of York Rd.
Location of Sign: front of property at 504 Dunkirk Rd.
Remarks:
Posted by: Ann D. Williams Date of return: 5/25/84
Number of Signs: 1

CERTIFICATE OF PUBLICATION 84-339-X

Towson, Md. 5/31/1984

THIS IS TO CERTIFY, that the annexed advertisement was published in the TOWSON TIMES, a weekly newspaper distributed in Towson, Baltimore County, Md., once a week for 1 consecutive weeks, the first publication appearing on the 16th day of May, 1984.

The TOWSON TIMES
Marianne A. Longhella

PETITION FOR SPECIAL EXCEPTION 9th Election District

ZONING: Petition for Special Exception
LOCATION: North side Dunkirk Road, 296 ft. East of the centerline of York Road (504 Dunkirk Road)
DATE & TIME: Monday, June 4, 1984 at 10:15 A.M.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:
Petition for Special Exception for office of a professional (pastoral counseling) in home and to determine whether a person who does pastoral counseling at the home should be considered as a professional person or whether it should be considered a home occupation.
Being the property of Lutie G. Ports, as shown on plat plan filed with the Zoning Department.
In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.
By Order of:
ARNOLD JABLON
Zoning Commissioner
of Baltimore County

CERTIFICATE OF PUBLICATION 84-339-X

TOWSON, MD. May 17, 1984

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once a week for 1 time before the 4th day of June, 1984, the first publication appearing on the 17th day of May, 1984.

THE JEFFERSONIAN
L. Frank Shusterman
Manager.

Cost of Advertisement, \$ 22.00

PETITION FOR SPECIAL EXCEPTION 9th Election District

ZONING: Petition for Special Exception
LOCATION: North side Dunkirk Road, 296 ft. East of the centerline of York Road (504 Dunkirk Road)
DATE & TIME: Monday, June 4, 1984 at 10:15 A.M.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

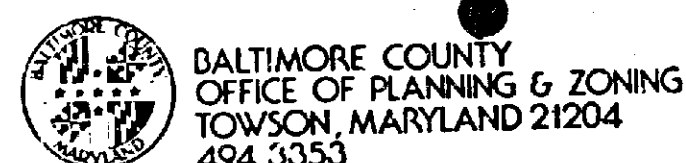
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Exception for office of a professional (pastoral counseling) in home and to determine whether a person who does pastoral counseling at the home should be considered as a professional person or whether it should be considered a home occupation.

Being the property of Lutie G. Ports, as shown on plat plan filed with the Zoning Department.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY



ARNOLD JABLON
ZONING COMMISSIONER

May 29, 1984

Mr. Lutie G. Ports
504 Dunkirk Road
Baltimore, Maryland 21212

Re: Petition for Special Exception
N/S Dunkirk Rd. 296' E of the c/l of
York Road (504 Dunkirk Road)
Case No. 84-339-X

Dear Mr. Ports:

This is to advise you that \$50.04 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE-REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 130517

DATE 6-4-84 ACCOUNT R-01-615-000

AMOUNT \$50.04

RECEIVED FROM Lutie G. Ports

FOR advertising & posting Case #84-339-X

002*****500410 8041A

VALIDATION OR SIGNATURE OF CASHIER

STATEMENT OF OPPOSITION

We, the residents of the 500 block Dunkirk Road oppose the "Special Exception" case # 84-339-X (504 Dunkirk Road, Baltimore, MD 21212) being reviewed today by the office of the Zoning Commissioner.

We are opposed because:

- We want the 500 block Dunkirk Road to remain totally residential and are concerned for what the future may bring should this "Special Exception" be granted.
 - The introduction of inhome professional services to the block will affect the traffic and parking patterns already established and congested. PLEASE NOTE! There exists a "NO PARKING AT ANY TIME" sign in front of the property.
 - By granting the "Special Exception", people who are unknown in the block will be patronizing the Pastoral Counseling Services. Frankly, strangers present a security and safety risk to any residential neighborhood.
 - The following home owners/home renters/apartment renters are concerned for the additional littering and trashing of our neighborhood that this operation could cause.
 - Finally, the property values will be lowered by having inhome professional services existing in this block.

We, the residents of the 500 block Dunkirk, take great pride in our homes and surrounding property. We have worked hard and invested much time and money into this area. We are deeply concerned and opposed to the granting of this "Special Exception" Case # 84-339-X.

1. Mrs. Alice P. Lange 512 Dunkirk Rd
2. Mr. & Mrs. T.A. Chong 510 Dunkirk Rd

continued

PROTESTANT
EXHIBIT 1

IN THE MATTER OF
JAN PORTS
RE: SPECIAL EXCEPTION
PETITION FOR
504 DUNKIRK ROAD

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
NO. 84-339X

MEMORANDUM IN SUPPORT OF SPECIAL EXCEPTION

Reverend M. S. Jan Ports, by his attorneys, S. Eric DiNenna and S. Eric DiNenna, P.A., files this Memorandum in Support of the Petitioner's request for special exception at 504 Dunkirk Road, and in support thereof says:

FACTS

A hearing was held before the Zoning Commissioner concerning this matter on June 4, 1984.

The question to be addressed in this Memorandum is whether or not a pastoral counselor is a professional person entitled to operate an office in a DR zone as a special exception as provided for in Section 1 B01.1.C.98 of the Zoning Regulations. For purposes of expediency, attached hereto and to be made a part hereof please find paper number one and paper number two prepared by the Petitioner, Reverend Ports as well as the exhibits attached thereto.

QUESTION

Is a pastoral counselor a professional person as contemplated in the Baltimore County Zoning Regulations?

LAW

A special exception is now required for "offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence; does not occupy more than twenty-five per cent of the total floor area of such residence; and does not involve the employment of more than one non-resident professional associate nor two other non-resident employees." Baltimore County Zoning Regulations Section B01.1.C.98.

The facts presented to the Commissioner at the time of hearing indicate that Reverend Ports occupies the subject property, that it is his primary

residence, that the intended use of an office will not occupy more than twenty-five per cent of the total residence and it will not involve the employment of more than one non-resident professional or two other non-resident employees.

Home occupation is defined as:

Any use conducted entirely within a dwelling which is incidental to the main use of the building for dwelling purposes and does not have any exterior evidence, other than a permitted sign, to indicate that the building is being utilized for any purpose other than that of a dwelling; and in connection with which no commodity is kept for sale on the premises, not more than one person is employed on the premises other than domestic servants or members of the immediate family, and no mechanical equipment is used except such as may be used for domestic purposes. Baltimore County Zoning Regulations Section 101.

Section B01.1A14.d. permits home occupations as a matter of right in a DR zone.

From all of the facts presented, it would certainly appear that Reverend Ports proposed use would in fact meet a definition of a home occupation. It is understood by this writer that in this particular set of circumstances, the Commissioner ruled that Reverend Ports' proposed use would not meet or comply with the definition of "home occupation".

The issue of professional person is to be addressed at this time. No cases dealing with specifically pastoral counselors, and for that matter, professionals, are found in the State of Maryland. Accordingly, in concert with the complainants' Memorandum, we must then consult commonly accepted meanings of terms by the use of dictionary and case law.

The Webster's New World Dictionary of the American Language, 1966 edition, defines a professional as:

"A professing, or declaring, avowal, as a religious belief; a faith or religion professed; an occupation requiring advanced training and some liberal art of science as teaching, engineering, medicine, law, or theology; the body of persons in a particular occupation; the avowal made on entering a religious order." (Emphasis added).

Ministers, priests, rabbis, are trained in the profession of theology. In the case at bar, there is no dispute that Reverend Ports is in fact a minister.

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The complainants make the issue that he no longer has a "church" but it is obvious that ministry can be exercised in other facets of society other than in a building of stone and gothic architecture, etc.

There are many cases defining the term profession, such as "the occupation, if not purely commercial, mechanical, architectural, or the like, to which one devotes oneself; the calling in which one professes to have acquired some special knowledge used by a way of either instructing, guiding, or advising others, or of serving them in some art as the profession of arms teaching or chemistry. England vs. Louisiana State Board of Medical Examiners, LA. App. 126 SO. 2d p. 51. The case of State Bar of Arizona vs. Arizona Land Title and Trust Company, 366 P.2d 1 defines profession as "an occupation, if not purely commercial, mechanical or agricultural, or the like, to which one devotes oneself; a calling in which one professes to have acquired some special knowledge used by way of either of instructing or advising others or serving them in some art. The three learned professions are theology, law and medicine." (Emphasis added).

Implicit in the term "professional" is knowledge of advanced type of given field of science or learning, gained by prolonged course of specialized instruction and study. Patterson vs. University of State of New York, 252 N.Y. State 2d 452 (Emphasis added).

Ministers are not only in the popular sense, but also in the technical sense, professional men. Flanders vs. Daily, 48 S.E. 327.

Now let us examine Reverend Ports. As paper number one and paper number two indicate, it is evident that he is well qualified. He is a minister of a faith, has various degrees, completed courses, etc., in pastoral counseling, which is in fact part of the ministry. He is not retired, not part-time, but in the full-time employ of his ministry, counseling people. Any one with any faith, has in fact in the past at some time or another, consulted with a religious figure such as a priest, rabbi, or minister and that said priest, rabbi, or minister has counseled that person. Lawyers counsel, planners counsel,

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doctors counsel, architects counsel, so do ministers counsel. It is a learned profession, of a mental and not physical or mechanical nature.

The issue of licensing of a minister by the State of Maryland or by any sub division is an absurd argument on the part of the complainants. Dogs and cats are licensed. It must be well noted that the professional planning staff is not licensed, nor is the Zoning staff of Baltimore County licensed, though in the opinion of this writer, both are professionals.

Zoning regulations are subject to construction in order to ascertain their meaning and effect, and such construction ordinarily is governed by the general rules applicable to the construction of statutes and ordinances; they are to be construed in the light of their language and the purposes they are designed to serve. Grebow vs. City of Baltimore, 1958, 217 MD. 333. It has been generally held that zoning laws should be strictly construed, or strictly construed in favor of the property owner, the same as other laws which are in derogation of common-law rights as to the use of private property. Fidler vs. Zoning Board of Adjustment, 408 PA. 260; Myer vs. Marshall, 22 ILL. App. 3d 217; Zibarco Stations, Inc. vs. Town Board of Vestal, 29 App. Div. 2d 907 (New York).

Assuming the Commissioner accepts Reverend Ports as a professional, then the question of the granting of the special exception is at issue. Section 502.1 of the Baltimore County Zoning Regulations is very clear, but "If there is no probative evidence of harm or disturbance in light of the nature of the zone involved or the factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious, and illegal." Anderson vs. Sawyer, 23 MD. App. 612. It is obvious from the facts that have been presented to the Commissioner, that this is a one man operation, is not using more than twenty-five per cent of his primary residence and there are no other employees. It is understood that he spends approximately twenty hours per week in the counseling of individuals and couples, spends the remaining time preparing reports, etc. There is absolutely no detrimental effect upon the neighborhood involved and accordingly

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a special exception should be granted.

For the above reasons, your Petitioner requests that the Commissioner interpret his use as a profession and grant the special exception.

Respectfully submitted,

S. ERIC DINENNA
S. ERIC DINENNA, P.A.
406 West Pennsylvania Avenue
Towson, Maryland 21204 296-6820
Attorneys for Reverend Jan Ports

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27 day of July, 1984, a copy of the foregoing MEMORANDUM IN SUPPORT OF SPECIAL EXCEPTION was mailed, postage prepaid, to Ray R. Fidler, Cable, McDaniel, Bowie & Bond, 900 Blaustein Building, One North Charles Street, Baltimore, Maryland 21201, attorneys for Thomas Church.

S. ERIC DINENNA
Of Counsel for Reverend Jan Ports

Paper #1

June 1984

The Ministry as a Profession

Rev. M.S. Jan Ports M. Div., M.S.

Clinical Member: Assoc. of Clinical Pastoral Education

Minister: United Church of Christ

Member: Mt. Mental Health Counselors Assoc.*

There are two bases on which the nature of profession can be discussed. On the one hand, certain occupations have traditionally been called professions- primarily law, medicine and clergy in ministry. On the other hand, some occupations are included in the classification if they meet certain standards. These standards are included below as "rational identifications" alongside the "traditional identification" above.

Carr, Saunders and Wilson give a definition of a profession-alongside their ideas I will present in parenthesis my own personal qualifications: One becomes a professional (1) by virtue of prolonged and specialized intellectual training (A.B. Psychology-Western Maryland College 1952; M. Div. Theology-Lancaster Theological Seminary 1955; Studies at Morgan State University 1963; CPE- 4 Units-completed 1963, equivalent to 4 years clinical training-Spring Grove Center, Catonsville; MS in Pastoral Counseling-Loyola College 1979; 2,250 hours of individual supervision with client cases 1960-1984) and (2) the acquiring of a technique (see parenthesis above ref: Spring Grove, Loyola, individual supervision as well as 30 years as a parish clergy) which (3) enables the practitioner to render a specialized service to those who receive it (see parenthesis above under point 1 and 2) for a fixed remuneration (salary and fees). Professionals (5) develop a sense of responsibility (my record as pastor and pastoral counselor most of my adult life attest to this point) and (6)

1. A.M. Carr-Saunders and P.A. Wilson, The Professions, (New York, Oxford U. Press, 1933) p. 290.
2. The clergy was at one time in America the only profession, or the basis on which other professions were built. It took its place with Physics and the Law, as it were, "by ancient right." - Ibid., pp. 291-94.
* (A professional assoc. for mental health clinicians at the Masters Level and beyond.)

406 W. Pennsylvania Avenue
Towson, Maryland 21204

S. Eric DiNenna, P.A.
Attorney at Law

June 22, 1984

Zoning Commissioner for Baltimore County
County Office Building
Towson, Maryland 21204

RE: Rev. Jan Ports
Location: Dunkirk Road
Case No. 84539X

Dear Mr. Commissioner:

Please be advised that I represent Rev. M. S. Jan Ports, tenant at 504 Dunkirk Road which is the subject of a Special Exception concerning the above-captioned case number.

It is my understanding that Memorandum of Law is to be submitted by F. V. Ports by June 22, 1984. Having just entered this matter, I would respectfully request an extension for submission of Memorandum for at least 10 days. I have discussed this with Mr. Fidler and he is not objecting to an extension of 10 days for the submission of Memorandum.

Thank you for your cooperation.

Very truly yours,

S. ERIC DINENNA

SED:bk
cc: Ray R. Fidler, Esquire
Rev. M. S. Jan Ports

406 W. Pennsylvania Avenue
Towson, Maryland 21204

S. Eric DiNenna, P.A.
Attorney at Law

July 3, 1984

Zoning Commissioner for Baltimore County
County Office Building
Towson, Maryland 21204

RE: Rev. Jan Ports
Location: Dunkirk Road
Case No. 84539X

Dear Mr. Commissioner:

As per your request, enclosed herewith please find a Memorandum in Support of Special Exception on behalf of Reverend Ports.

Very truly yours,

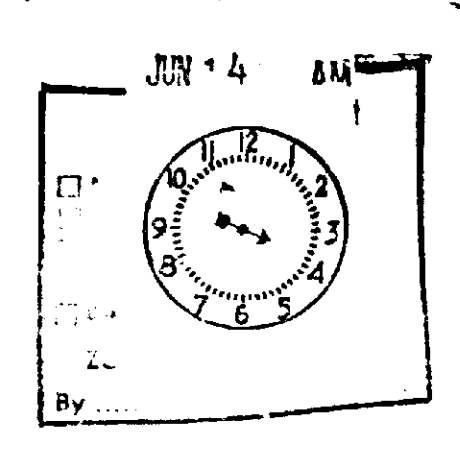
S. ERIC DINENNA

SED:bk
Enclosure
cc: Ray R. Fidler, Esquire

24/1578

6/11/84

CABLE, McDaniel, Bowie & Bond
ONE NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201-3793
AREA CODE 301
752-3650
June 13, 1984



Arnold Jablon, Zoning Commissioner
111 W. Chesapeake Avenue
Towson, Maryland 21204
Re: In Re Jan Ports
84-339X

Dear Mr. Commissioner:
I am enclosing herewith an original and two copies of the Memorandum in Opposition to Special Exception in the above-captioned matter, for filing and as a courtesy copy.

By copy of this letter and the Certificate of Service on the pleading, Mr. Ports is advised of such filing.

Very truly yours,
Ray R. Fidler
Ray R. Fidler

RRF:mab
Enclosures
cc: Mr. Jan Ports

IN THE MATTER OF * BEFORE THE
JAN PORTS * ZONING COMMISSIONER
RE: SPECIAL EXCEPTION * OF BALTIMORE COUNTY
PETITION FOR *
504 DUNKIRK ROAD * NO. 84-339X
* * * * *

MEMORANDUM IN OPPOSITION TO SPECIAL EXCEPTION

Thomas Church, 510 Dunkirk Road, by his attorneys, Cable, McDaniel, Bowie & Bond, and Ray R. Fidler, files this Memorandum in Opposition to the granting of a Petition for Special Exception for 504 Dunkirk Road, and as reasons therefor respectfully states:

I. BACKGROUND

At an evidentiary hearing on June 4, 1984, before the Commissioner, it was held that the proposed use of 504 Dunkirk Road (the "Property") as offices for a "pastoral counselor" was not a "Home Occupation" as defined in the Zoning Regulations of Baltimore County (the "Code"). The Commissioner left open the question of whether a "pastoral counselor" is a "professional person" entitled to operate an office in a D.K. Zone as a Special Exception under Section 1B01.1.C.9B of the Code (the "Relevant Section"), and agreed to submission of Memoranda on such limited issue by the parties.

The relevant facts established on the point at issue are as follows:

1. Mr. Ports' occupation for many years has been that of minister.
2. In addition to his duties as a minister, he began giving "pastoral counseling" to certain families, couples and individuals at some date in the past.
3. He is retired from the ministry, but now wishes to practice "pastoral counseling" as a part-time occupation.

that where general words of a statute ("other professional persons") follow the designation of particular classes of persons (physicians, dentists, lawyers, architects, engineers, artists and musicians) that the general words should be strictly construed so as to include only those persons of the same class as those specifically mentioned. Smith v. Higginbotham, 187 Md. 115, 46 A.2d 754 (1946); 82 C.J.S. Statutes §332b, p. 658.

Clearly, a "pastoral counselor" does not belong in the category of artist, musician or other artisan who manifest "fine artistry or workmanship".

Mr. Ports therefore must hang his hat on the argument he is like a doctor, lawyer, architect or engineer. But the facts dictate otherwise. Mr. Ports is not licensed by the State, as the specifically-enumerated professionals are; nor do "pastoral counselors" have their own standards such as those established by State Board, the American Medical Association or the American Bar Association.

No cases dealing specifically with "pastoral counselors" has been found. However, numerous analogous decisions have followed the rationale set forth above to declare the following occupations not professional: dental technician (West Virginia Board of Dental Examiners v. Storch, 122 S.E.2d 295 (W.Va. 1961)); licensed beautician (Bonasi v. Board of Adjustment of Haverford Township, 115 A.2d 225 (Pa. 1955)); photographic studio (State v. Board of Appeals of the City of Racine, 66 N.W.2d 623 (Wisc. 1954)); and real estate broker (Copman v. Long Beach Township, 231 A.2d 852 (N.J. App. 1967)).

Two cases are of particular interest. In Keefe Company v. District of Columbia Board of Zoning Adjustment, 409 A.2d 624 (D.C. App. 1979) the Court held a lobbyist and consulting firm was not a "similar professional person" to doctors, lawyers, dentists, architects and engineers. The Court cited three requirements necessary in determining "professional" status: (1) professional

education; (2) a code of ethics and some principles of practice through a professional organization and (3) professional licensing. The Court found the first requirement met, but the other two not met and accordingly denied the special exception. In the instant case, the evidence is uncontroverted that Mr. Ports fails to meet the last two criteria recognized in Keefe. It is argued that such requirements are reasonable criteria to apply in this case. And such a view of enforcing these requirements is directly supported by prior decision in this County.

This second important case is Baltimore County Board of Appeals Case No. 82-179-V, In Re: James Donahue. That case granted "professional person" status to a private investigator, and reasoned chiefly that he enjoyed such status (as in Keefe) because of state licensing:

Mr. Donahue also testified that the State requires individuals choosing his career to be licensed. By virtue of this licensing requirement, the State is permitted to regulate this industry as they would any other profession that is similarly licensed and regulated. The Board, therefore, determines that a professional private investigator is a professional person within the meaning of the Zoning Regulations.

As in Keefe and Donahue, such reasoning should control here. In requiring a non-artisan professional to satisfy all three criteria in Keefe, as reinforced by Donahue, a perfectly reasonable standard would be adopted for interpreting the term "other professional person" in a non-artisan setting.

4. "Pastoral counseling" is a therapeutic process or psycho-therapeutic process employing a religious point of view, much like the therapy delivered by a psychiatrist, psychologist or social worker.

5. Psychiatrists, psychologists and social workers are all licensed by the State of Maryland as certification of their professional skills, in delivering therapy.

6. "Pastoral counselors", including Mr. Ports, are not so licensed by the State.

7. Psychiatrists, psychologists and social workers are certified as legitimate recipients of payments by third party medical payors such as Blue Cross/Blue Shield, insurance companies and Medicare-Medicaid.

8. "Pastoral counselors", including Mr. Ports, are not so certified by third party medical payors.

9. Mr. Ports has received master's degrees in theology and pastoral counseling.

10. Mr. Ports is not certified by his church or any other organization as a pastoral counselor.

11. Mr. Ports is not a member of any organization enforcing ethical or technical standards in the counseling field.

As will be demonstrated below, given such facts, a pastoral counselor is not a professional person as contemplated by the Code.

II. LEGAL ARGUMENT

The Relevant Section provides a Special Exception for

offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence; does not occupy more than 25 percent of the total floor area of such residence; and does not involve the employment of more than one resident professional associate nor two other non-resident employees.

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III. CONCLUSION

For the foregoing reasons, the Petition for Special Exception should be denied.

Respectfully submitted,
CABLE, McDaniel, Bowie & Bond

By Ray R. Fidler
Ray R. Fidler
900 Blaustein Building
One North Charles Street
Baltimore, Maryland
(301) 752-3650

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June, 1984, I hand-delivered a copy of the foregoing Memorandum in Opposition to Special Exception to Jan Ports, 504 Dunkirk Road, Baltimore, Maryland 21212.

Ray R. Fidler
Ray R. Fidler

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The term "other professional persons" is to be interpreted here because "pastoral counselor" clearly is not a specifically enumerated professional person in the Code. "Other professional persons" is not defined in the Code.

Two rules of statutory construction are in effect in the case at hand. The first is that a term not specifically defined should be construed as having its ordinary and commonly accepted meaning. Scoville Service, Inc. v. Comptroller of the Treasury, 269 Md. 390, 306 A.2d 534 (1973); Mauzy v. Hornbeck, 285 Md. 84, 400 A.2d 1091 (1979). In order to determine the commonly accepted meaning of a term, dictionaries and case law are usually consulted. Scoville Service, Inc. v. Comptroller of the Treasury, supra.

Webster's Third New International Dictionary, Unabridged, defines the adjective "professional" as:

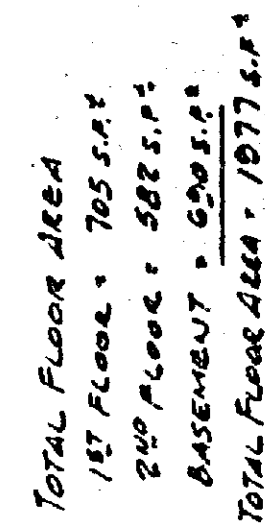
1b(1): engaged in one of the learned professions or in an occupation requiring a high level of training and proficiency... (2): characterized by or conforming to the technical or ethical standards of a profession or an occupation; manifesting fine artistry or workmanship based on sound knowledge and conscientiousness...

This definition clearly matches the listing of "professionals" in the Relevant Section and just as clearly rules out a "pastoral counselor" as a professional person. The definition teaches that a professional person is either a learned person conforming to the ethical and technical standards of a professional group or is a highly skilled artist.

It should be noted the Relevant Section makes a similar division between licensed learned persons who must conform to the standards of a professional organization code (physicians, dentists, lawyers, architects, and engineers), and artisans (artists and musicians). This fit between the Code and Webster's is important because it reinforces the second rule of construction relevant to this inquiry. This is the rule of ejusdem generis.

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1000' ONLY

13.5' KITCHEN 6' 6'

13.5' DINING ROOM 10' 10'

13.5' HALL 6' 6'

13.5' BED ROOM 10.5' 10.5'

13.5' BED ROOM 10.5' 10.5'

13.5' BATH 4.5' 4.5'

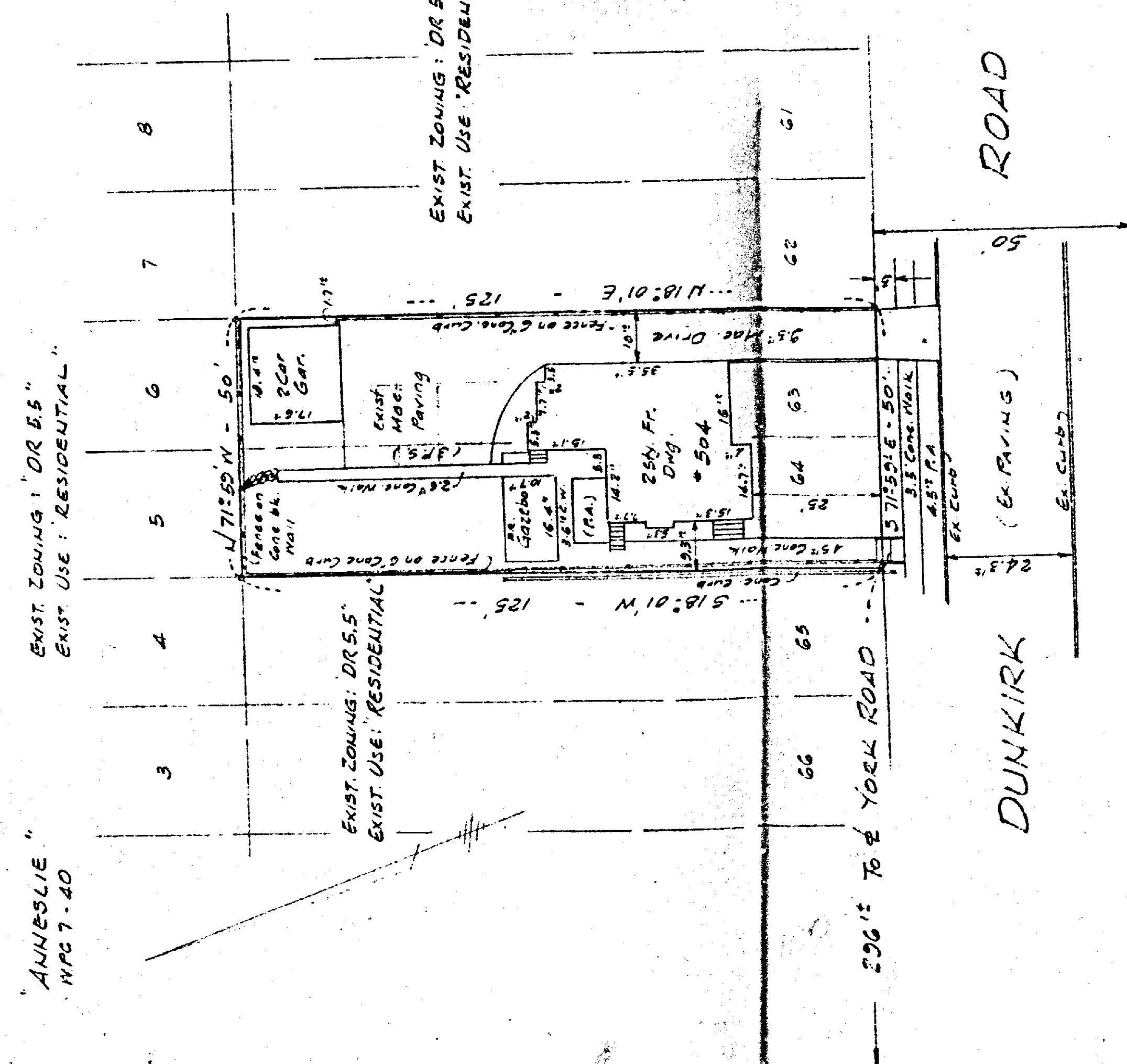
13.5' LIVING ROOM 13.5'

13.5' CLOSED PORCH

SPECIAL EXCEPTION
REQUESTED FOR
LIVING ROOM: ONLY.

1ST FLOOR PLAN
40-3646

EXIST. ZONING: DR 5.5"



DIUNKIRK
4.3" (EXPANS.)
50'
ROAD

EXIST ZONING: "DR 5.5"
EXIST. USE: "RESIDENTIAL"

PLAT TO ACCOMPANY PETITION

FOR

SPECIAL EXCEPTION

504 DUNKIRK ROAD

2510 2237H HIG ELECT DIST.

SCALE: 1" = 20'

APR 2 1980

REV. MAY 31, 1984

**PETITIONER'S
EXHIBIT**

6729

Revised Plans

5/31/91

407

1974

برای اطلاع و آگاهی از این موضوع، به شما توصیه می‌کنیم که با یک متخصص مشورت کنید.

34003

